IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2401 OF 2004

Shri. Chandrakant Puanmal Mundra
and Thane (W) and Ors. ... Petitioners

Vs.

Special Land Acquisition Officer,
Special Unit, Thane at Thane,
Collector's office, Thane
and Ors. ... Respondents

Mr. D.K. Ghaisas for Petitioner.

Mr. R.S. Datar for Respondent No. 2.

Mr. R.D. Soni i/by Ram & Co. for Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 02, 2005

P.C.

. Rule. Heard forthwith.

. The Petitioners claim through Respondent No. 3. Respondent No. 3 is the partner of Respondent No. 2. The Respondent No. 2 partnership along with partners is owner of the land which were acquired under the provisions of the Land Acquisition Act. Earlier there were some disputes between Respondent No.2 and Central Government as to the ownership of the land. These disputes have since been resolved, this court had taken a view that the Respondent NO.

2 holds title as owner of the land. S.L.P. preferred before the apex Court has been dismissed.

. Subsequent to the proceedings for acquisition, the award has been made on 8.7.2002. The amount as awarded has already been paid.

. On 8.11.2002 the petitioners herein applied under Section 30 of the Land Acquisition Act to Respondent No. 1 that they are interested in the compensation as they have a right in the share of Respondent No. 3. It was the contention therefore, that the Respondent No. 1 should refer the matter to the Reference Court under Section 30 of the Land Acquisition Act. That application for reference was rejected by the Respondent No. 1 by its order dated 5.2.2004. The Respondent No. 1 informed the petitioners that as the petitioners were not interested parties in the land in respect of which the award has been passed, the application was disposed of without any further action. It is this order which is the subject matter of the present challenge.

. Reply has been filed on behalf of the Respondent no. 1. It is pointed out therein that the title in the land has been concluded as set out in Para 2 of the reply in favour of Respondent No 2. The Petitioners herein had filed application for

reference under Section 30 after the award. They however, did not produce any documentary evidence regarding ownership of the land before declaration of award. Considering that names of the Petitioners were not included in the award as declared as they were not interested persons/owners.

. Affidavit in reply has also been filed by Respondent No. 3. Various contentions have been raised. It is therein set out also that various proceedings have been taken out. The Respondent No. 2 firm has been held to be sole owner of the land. Respondent No. 2 is a partnership firm of which amongst others respondent No. 3 is partner. There is deed between Petitioner and Respondent No. 2 which is not binding on the partners of Respondent No. 2. It is contended that on the facts of the case, no reference could have been made and the grievance could be agitated by the competent civil court. Various other contentions which have been raised need not be adverted to for the view to be taken. It is therefore, submitted that the petition ought to be dismissed.

. At the hearing of this petition, on behalf of the Petitioners, their learned counsel submits that once the application under Section 30 was made to Respondent No. 1, Respondent No. 1 was duty bound

to refer the dispute to the Reference court competent to decide the dispute. For that purpose reliance is placed on the judgment of the learned Division Bench of this Court in Dnyaneshwar S/o. Sheku Tarde Vs. State of Maharashtra and others 2002 (4) Mh.L.J. 612. It is further submitted that the decision of first respondent in not referring the matter clearly discloses an error apparent on the face of record or failure to exercise jurisdiction. It is therefore, submitted that the decision of Respondent No. 1 not to refer the dispute communicated by letter dated 31.01.2004 be set aside and Respondent NO. 1 should be directed to make reference as sought for.

. The law on the subject in our opinion is covered by the judgement of the Apex Court in the case of Dr. G.H. Grant Vs. State of Bihar, AIR 1966 SC 237. The Apex Court has noted that there are two provisions for making reference, one under Section 18 and the other under Section 30. We are concerned with what is referable to section 30 of the Land Acquisition Act. In the majority judgement in the said case, in Paragraph 12 while referring to the power conferred on the Collector under Section 30 the Court observed as under:

"The collector is under S.30 not enjoined to make a reference; he may relegate the

person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his ward."

. Thereafter the Apex Court once again in Para 19 observed as under :

"The Collector has no power to finally adjudicate upon the title to compensation; that dispute has to be decided either in a reference under S.18 or under S.30 or in a separate suit."

. In the instant case, admittedly no notice was issued to the Petitioners in the proceedings for acquisition. They also did not apply under Section 18. They applied under Section 30. It is true that there is no bar of limitation for application under Section 30 as long as it is made within a reasonable time. The law however, as explained is that the Collector need not in every case where reference is sought under Section 30, is bound to make reference. He may in cases, leave the parties to agitate their dispute before the Civil Court. That however, does not mean that Respondent No. 2 can arbitrarily refuse to make reference if there be triable issues. The order of Respondent No. 1

in considering and deciding the controversy, will be subject to the supervisory jurisdiction of this court. Let us therefore, examine on the facts of the case and the law as explained above, as to whether the ultimate decision of the Respondent No. 1 as communicated by order dated 5.2.2004 will have to be interfered with.

. As pointed out earlier the Petitioners admittedly are not partners of Respondent No. 2. It is only Respondent No. 3 who is partner. Admittedly the partnership subsists till date having not been dissolved. The right of the Petitioner is based on the agreement being sub partnership dated 29.3.2000. That partnership is between Respondent No. 3 on the one hand and amongst others petitioners herein. Though the agreement is styled as partnership, that partnership has not been registered under he provision of the Indian Partnership Act. At the highest therefore, it can be treated as agreement between the parties to the agreement, to share in the profits which Respondent No. 3 maybe getting as partner of Respondent No. 2. In fact that is so reflected in the agreement which provides for share of property or lands to the parties of the said agreement and percentage that they would be entitled to. It will thus be clear from the said agreement that the parties to the agreement are

entitled to as what Respondent No. 3 may get as his share from the main partnership. The owner of the land is the partnership Respondent No. 2. The compensation has been paid by the State to Respondent No. 2. In other words the owners of the land has been paid compensation. The Petitioners herein admittedly are not the owners of the land. All that they seek is share from the Respondent No. 3 which may be allotted as share of profits, including the compensation which might have been received by the Respondent No. 3. That wold not make the Petitioners herein owners of the land or having interest in the land. At the highest they would have share in the share of Respondent No. 3 of the profits that may be allotted to him or paid to him by the partnership firm. Once that be the case, there was no dispute prima facie arising in so far as the land or Compensation is concerned viz a viz State Government. The dispute is interse between the Respondent No. 3 and Petitioners. In these circumstances, Respondent No. 1 was right ultimately in rejecting the application for reference. It may be that the Respondent No. 1 did not address himself to the correct issues, but Respondent No. 1 was right in rejecting the application. This will therefore not be a fit case where this court should exercise the extra ordinary jurisdiction as it will be open to the petitioners

to approach the competent civil court for redressal of their grievance which they are entitled to.

. In the light of that, rule discharged. No order as to costs.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)